

## § 725.311

decreased, any payment made in excess of the decreased rate shall be subject to collection or offset under subpart G of this part.

### § 725.311 Communications with respect to claims; time computations.

(a) Unless otherwise specified by this part, all requests, responses, notices, decisions, orders, or other communications required or permitted by this part shall be in writing.

(b) If required by this part, any document, brief, or other statement submitted in connection with the adjudication of a claim under this part shall be sent to each party to the claim by the submitting party. If proof of service is required with respect to any communication, such proof of service shall be submitted to the appropriate adjudication officer and filed as part of the claim record.

(c) Whenever any notice, document, brief or other statement is served by mail, 7 days shall be added to the time within which a reply or response is required to be submitted.

(d) In computing any period of time described in this part, by any applicable statute, or by the order of any adjudication officer, the day of the act or event from which the designated period of time begins to run shall not be included. The last day of the period shall be included unless it is a Saturday, Sunday, or legal holiday, in which event the period extends until the next day which is not a Saturday, Sunday, or legal holiday. "Legal holiday" includes New Year's Day, Washington's Birthday, Memorial Day, Independence Day, Labor Day, Columbus Day, Veterans Day, Thanksgiving Day, Christmas Day and any other day appointed as a holiday by the President or the Congress of the United States.

### Subpart D—Adjudication of Claims; Adjudication Officers

#### § 725.350 Who are the adjudication officers.

(a) *General.* The persons authorized by the Secretary of Labor to accept evidence and decide claims on the basis of such evidence are called "adjudication officers." This section describes

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the status of black lung claims adjudication officers.

(b) *Deputy commissioner.* The deputy commissioner is that official of the DCMWC or his designee who is authorized to perform functions with respect to the development, processing, and adjudication of claims in accordance with this part.

(c) *Administrative law judge.* An administrative law judge is that official appointed pursuant to 5 U.S.C. 3105 (or Pub. L. 94-504) who is qualified to preside at hearings under 5 U.S.C. 557 and is empowered by the Secretary to conduct formal hearings with respect to, and adjudicate, claims in accordance with this part. A person appointed under Public Law 94-504 shall not be considered an administrative law judge for purposes of this part for any period after March 1, 1979.

#### § 725.351 Powers of adjudication officers.

(a) *Deputy commissioner.* The deputy commissioner is authorized to: (1) Make determinations with respect to claims as is provided in this part; (2) conduct conferences and informal discovery proceedings as provided in this part; (3) compel the production of documents by the issuance of a subpoena, with the written approval of the Director; (4) prepare documents for the signature of parties; (5) issue appropriate orders as provided in this part; (6) do all other things necessary to enable him or her to discharge the duties of the office.

(b) *Administrative Law Judge.* An administrative law judge is authorized to: (1) conduct formal hearings in accordance with the provisions of this part; (2) administer oaths and examine witnesses; (3) compel the production of documents and appearance of witnesses by the issuance of subpoenas; (4) issue decisions and orders with respect to claims as provided in this part; and (5) do all other things necessary to enable him or her to discharge the duties of the office.

(c) If any person in proceedings before an adjudication officer disobeys or resists any lawful order or process, or misbehaves during a hearing or so near the place thereof as to obstruct the

same, or neglects to produce, after having been ordered to do so, any pertinent book, paper or document, or refuses to appear after having been subpoenaed, or upon appearing refuses to take the oath as a witness, or after having taken the oath refuses to be examined according to law, the deputy commissioner with the approval of the Director, or the administrative law judge responsible for the adjudication of the claim, shall certify the facts to the Federal district court having jurisdiction in the place in which he or she is sitting (or to the U.S. District Court for the District of Columbia if he or she is sitting in the District) which shall thereupon in a summary manner hear the evidence as to the acts complained of, and, if the evidence so warrants, punish such person in the same manner and to the same extent as for a contempt committed before the court, or commit such person upon the same condition as if the doing of the forbidden act had occurred with reference to the process or in the presence of the court.

**§ 725.352 Disqualification of adjudication officer.**

(a) No adjudication officer shall conduct any proceedings in a claim in which he or she is prejudiced or partial, or where he or she has any interest in the matter pending for decision. A decision to withdraw from the consideration of a claim shall be within the discretion of the adjudication officer. If that adjudication officer withdraws, another officer shall be designated by the Director or the Chief Administrative Law Judge, as the case may be, to complete the adjudication of the claim.

(b) No adjudication officer shall be permitted to appear or act as a representative of a party under this part while such individual is employed as an adjudication officer. No adjudication officer shall be permitted at any time to appear or act as a representative in connection with any case or claim in which he or she was personally involved. No fee or reimbursement shall be awarded under this part to an individual who acts in violation of this paragraph.

(c) No adjudication officer shall act in any claim involving a party which

employed such adjudication officer within one year before the adjudication of such claim.

(d) Notwithstanding paragraph (a) of this section, no adjudication officer shall be permitted to act in any claim involving a party who is related to the adjudication officer by consanguinity or affinity within the third degree as determined by the law of the place where such party is domiciled. Any action taken by an adjudication officer in knowing violation of this paragraph shall be void.

**PARTIES AND REPRESENTATIVES**

**§ 725.360 Parties to proceedings.**

(a) Except as provided in § 725.361, no person other than the Secretary of Labor and authorized personnel of the Department of Labor shall participate at any stage in the adjudication of a claim for benefits under this part, unless such person is determined by the appropriate adjudication officer to qualify under the provisions of this section as a party to the claim. The following persons shall be parties:

- (1) The claimant;
- (2) A person other than a claimant, authorized to execute a claim on such claimant's behalf under § 725.301;
- (3) Any coal mine operator notified under § 725.412 of its possible liability for the claim;
- (4) Any insurance carrier of such operator; and
- (5) The Director in all proceedings relating to a claim for benefits under this part.

(b) A widow, child, parent, brother, or sister, or the representative of a decedent's estate, who makes a showing in writing that his or her rights with respect to benefits may be prejudiced by a decision of an adjudication officer, may be made a party.

(c) Any coal mine operator or prior operator or insurance carrier which has not been notified under § 725.412 and which makes a showing in writing that its rights may be prejudiced by a decision of an adjudication officer may be made a party.

(d) Any other individual may be made a party if that individual's rights with respect to benefits may be prejudiced by a decision to be made.